

## REMARKS

Claims 1-3, 8, 9, 24, and 31-45 are pending. Claims 1, 24, 31, and 44 have been amended. Claims 4-7, 10-23, and 25-30 were previously cancelled without prejudice or disclaimer. No new matter has been added. Support for the claim amendments may be found in the specification, drawings, and claims as originally filed.

### **Claims 1-3, 8-9, 24, 31, 34-36, 38, 41, and 44 are Allowable**

The Office has rejected claims 1-3, 8-9, 24, 31, 34-36, 38, 41, and 44, under 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 6,698,020 (“Zigmond”) in view of U.S. Patent No. 6,002,393 (“Hite”) in further view of U.S. Patent No. 7,006,606 (“Cohen”). Applicants respectfully traverse the rejections.

The cited portions of Zigmond, Hite, and Cohen do not disclose or suggest the specific combination of claim 1. For example, the cited portions of Zigmond, Hite, and Cohen fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1.

Zigmond describes techniques for intelligent video ad insertion. *See* Zigmond, Title. The Office cites Zigmond, col. 13, lines 40-47, indicating that “Zigmond discloses that once an advertisement has been viewed a certain number of times in a given period, it can be blocked from being used again.” *See* Office Action, p. 3. The cited portions of Zigmond describe a statistics collection location 61 that counts a number of times that a particular viewer has seen a selected advertisement. The cited portions of Zigmond do not disclose or suggest selecting an advertisement based on at least a time that a particular targeted advertisement was last played by a media delivery device, as in claim 1. Further, the Office admits that Zigmond does not disclose identifying a set of allowable advertisements. *See* Office Action, pp. 3-4 (Emphasis Added). Still further, the Office admits that Zigmond does not disclose selecting a particular

advertisement from a set of allowable advertisements to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, as in claim 1. *See* Office Action, pp. 4-5 (Emphasis Added). Therefore, the cited portions of Zigmond do not disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1.

Hite describes assigning advertisements to certain categories, such as non-preemptable, conditionally preemptable, and unconditionally preemptable. *See* Office Action, p. 4 (citing Hite, col. 2, lines 18-38). In rejecting claim 38, the Office asserts that Hite discloses that the weighted characteristics include a frequency at which a particular targeted advertisement has been inserted into the media stream. *See* Office Action, p. 10. Hite describes keeping track of the number of successfully displayed commercials so that an advertiser can be assured that the commercial has been displayed at the subscriber's location at least the number of times specified in his contract. *See* Hite, col. 2, line 66 to col. 3, line 8 (Emphasis Added). The cited portions of Hite do not disclose or suggest categorization based on a time that a particular targeted advertisement was last played by a media delivery device, as in claim 1. Further, the Office admits that Hite does not disclose selecting a particular advertisement from a set of allowable advertisements to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, as in claim 1. *See* Office Action, pp. 4-5 (Emphasis Added). Therefore, the cited portions of Hite do not disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time

that a particular targeted advertisement was last played by the media delivery device, as in claim 1.

Cohen describes combining scores from various vendors, then ranking and ordering the combined scores in order to determine an advertisement to be displayed. In this way, it is possible for a vendor to select a particular advertisement to direct to a consumer according to the consumer's attributes. *See* Office Action, p. 5, referring to Cohen, Fig. 8; col. 13, line 49 to col. 15, line 17 (Emphasis Added). The cited portions of Cohen do not disclose or suggest selecting an advertisement from a set of allowable advertisements stored at a media delivery device, as in claim 1. In Cohen, when a consumer is identified at a web site, attributes associated with the consumer are recalled from a database so as to be used in computing which ad to display. *See* Office Action, p. 5 (Emphasis Added). Thus, in Cohen, a set of allowable advertisements are not stored at a media delivery device, as in claim 1. Rather, advertisements are stored at a database associated with the web site. Further, the cited portions of Cohen do not disclose or suggest selecting an advertisement based on at least a time that a particular targeted advertisement was last played by a media delivery device, as in claim 1. Therefore, the cited portions of Cohen do not disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1.

Therefore, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, fail to disclose or suggest at least one element of claim 1. Hence, claim 1 is allowable. Claims 2, 3, 8, 9, 34-36, 38, and 41 depend from claim 1. Accordingly, claims 2, 3, 8, 9, 34-36, 38, and 41 are also allowable, at least by virtue of their dependence from claim 1.

The cited portions of Zigmond, Hite, and Cohen do not disclose or suggest the specific combination of claim 24. For example, the cited portions of Zigmond, Hite, and Cohen fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of

allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 24.

Zigmond describes techniques for intelligent video ad insertion. *See* Zigmond, Title. The Office cites Zigmond, col. 13, lines 40-47, indicating that “Zigmond discloses that once an advertisement has been viewed a certain number of times in a given period, it can be blocked from being used again.” *See* Office Action, p. 3. The cited portions of Zigmond describe a statistics collection location 61 that counts a number of times that a particular viewer has seen a selected advertisement. The cited portions of Zigmond do not disclose or suggest selecting an advertisement based on at least a time that a particular targeted advertisement was last played by a media delivery device, as in claim 24. Further, the Office admits that Zigmond does not disclose identifying a set of allowable advertisements. *See* Office Action, pp. 3-4 (Emphasis Added). Still further, the Office admits that Zigmond does not disclose selecting a particular advertisement from a set of allowable advertisements to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, as in claim 24. *See* Office Action, p. 8 (Emphasis Added). Therefore, the cited portions of Zigmond do not disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 24.

Hite describes assigning advertisements to certain categories, such as non-preemptable, conditionally preemptable, and unconditionally preemptable. *See* Office Action, p. 4 (citing Hite, col. 2, lines 18-38). In rejecting claim 38, the Office asserts that Hite discloses that the weighted characteristics include a frequency at which a particular targeted advertisement has been inserted into the media stream. *See* Office Action, p. 10. Hite describes keeping track of the number of successfully displayed commercials so that an advertiser can be assured that the commercial has been displayed at the subscriber’s location at least the number of times specified

in his contract. *See* Hite, col. 2, line 66 to col. 3, line 8 (Emphasis Added). The cited portions of Hite do not disclose or suggest categorization based on a time that a particular targeted advertisement was last played by a media delivery device, as in claim 24. Further, the Office admits that Hite does not disclose selecting a particular advertisement from a set of allowable advertisements to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, as in claim 24. *See* Office Action, p. 8 (Emphasis Added). Therefore, the cited portions of Hite do not disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 24.

Cohen describes combining scores from various vendors, then ranking and ordering the combined scores in order to determine an advertisement to be displayed. In this way, it is possible for a vendor to select a particular advertisement to direct to a consumer according to the consumer's attributes. *See* Office Action, p. 5, referring to Cohen, Fig. 8; col. 13, line 49 to col. 15, line 17 (Emphasis Added). The cited portions of Cohen do not disclose or suggest selecting an advertisement from a set of allowable advertisements stored at a media delivery device, as in claim 24. In Cohen, when a consumer is identified at a web site, attributes associated with the consumer are recalled from a database so as to be used in computing which ad to display. *See* Office Action, p. 5 (Emphasis Added). Thus, in Cohen, a set of allowable advertisements are not stored at a media delivery device, as in claim 24. Rather, advertisements are stored at a database associated with the web site. Further, the cited portions of Cohen do not disclose or suggest selecting an advertisement based on at least a time that a particular targeted advertisement was last played by a media delivery device, as in claim 24. Therefore, the cited portions of Cohen do not disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable

advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 24.

Therefore, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, fail to disclose or suggest at least one element of claim 24. Hence, claim 24 is allowable. Claims 31 depends from claim 24. Accordingly, claim 31 is also allowable, at least by virtue of its dependence from claim 24. Further, claim 31 recites additional elements that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen.

For example, the cited portions of Zigmond, Hite, and Cohen do not disclose or suggest that weighted characteristics of each allowable advertisement that are compared include a contract condition associated with each of the allowable advertisements, a type of product advertised, and a relative pricing of the product advertised, as in claim 31. The Office cites Zigmond, indicating that “Zigmond discloses a sponsor, such as the advertiser of a current release motion picture, as well as a type of product advertised, i.e. said motion picture.” *See* Office Action, p. 9, citing Zigmond, col. 12, line 60 to col. 13, line 6. Applicants respectfully submit that the cited portions of Zigmond do not disclose or suggest a weighted characteristic of an allowable advertisement that includes a relative pricing of an advertised product, as in claim 31. For at least this additional reason, claim 31 is allowable.

The cited portions of Zigmond, Hite, and Cohen do not disclose or suggest the specific combination of claim 44. For example, the cited portions of Zigmond, Hite, and Cohen fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each allowable advertisement of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 44.

As explained above, the cited portions of Zigmond describe a statistics collection location 61 that counts a number of times that a particular viewer has seen a selected advertisement. The cited portions of Zigmond do not disclose or suggest selecting an advertisement based on at least a time that a particular targeted advertisement was last played by a media delivery device. Further, Hite describes keeping track of the number of successfully displayed commercials so that an advertiser can be assured that the commercial has been displayed at the subscriber's

location at least the number of times specified in his contract. *See* Hite, col. 2, line 66 to col. 3, line 8 (Emphasis Added). The cited portions of Hite do not disclose or suggest categorization based on a time that a particular targeted advertisement was last played by a media delivery device. Further, In Cohen, when a consumer is identified at a web site, attributes associated with the consumer are recalled from a database so as to be used in computing which ad to display. *See* Office Action, p. 5 (Emphasis Added). In Cohen, a set of allowable advertisements are not stored at a media delivery device. Rather, advertisements are stored at a database associated with the web site. Further, the cited portions of Cohen do not disclose or suggest selecting an advertisement based on at least a time that a particular targeted advertisement was last played by a media delivery device.

Therefore, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, fail to disclose or suggest at least one element of claim 44. Hence, claim 44 is allowable.

#### **Claims 32 and 33 are Allowable**

The Office has rejected claims 32 and 33, under 35 U.S.C. §103(a), as being unpatentable over Zigmond in view of Hite in further view of Cohen in further view of U.S. Patent No. 6,078,412 (“Fuse”). Applicants respectfully traverse the rejections.

Claim 32 depends from claim 1. As explained above, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, do not disclose or suggest at least one element of claim 1. The cited portions of Fuse fail to disclose or suggest the elements of claim 1 that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen. Fuse describes a system for simultaneously optically transmitting a plurality of digital modulation signals using an analog SCM transmission technique. The cited portions of Fuse fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1. Therefore, the cited portions of Zigmond, Hite, Cohen, and Fuse, individually or in combination, fail to disclose or

suggest at least one element of claim 1, from which claim 32 depends. Hence, claim 32 is also allowable, at least by virtue of its dependence from claim 1.

Claim 33 depends from claim 24. As explained above, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, do not disclose or suggest at least one element of claim 24. The cited portions of Fuse fail to disclose or suggest the elements of claim 24 that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen. Fuse describes a system for simultaneously optically transmitting a plurality of digital modulation signals using an analog SCM transmission technique. The cited portions of Fuse fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 24. Therefore, the cited portions of Zigmond, Hite, Cohen, and Fuse, individually or in combination, fail to disclose or suggest at least one element of claim 24, from which claim 33 depends. Hence, claim 33 is also allowable, at least by virtue of its dependence from claim 24.

### **Claims 37 and 39 are Allowable**

The Office has rejected claims 37 and 39, under 35 U.S.C. §103(a), as being unpatentable over Zigmond in view of Hite in further view of Cohen in further view of U.S. Patent No. 6,286,005 (“Cannon”). Applicants respectfully traverse the rejections.

Claims 37 and 39 depend from claim 1. As explained above, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, do not disclose or suggest at least one element of claim 1. The cited portions of Cannon fail to disclose or suggest the elements of claim 1 that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen. Cannon describes scoring advertisements based on their ability to meet certain objectives and that an advertisement may be deleted and replaced based on the scores. *See* Office Action, p. 16, citing Cannon, Fig. 13; col. 31, line 49 to col. 33, line 67. The cited portions of Cannon fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a



weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1. Therefore, the cited portions of Zigmond, Hite, Cohen, and Cannon, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claims 37 and 39 depend. Hence, claims 37 and 39 are also allowable, at least by virtue of their dependence from claim 1.

#### **Claim 40 is Allowable**

The Office has rejected claim 40, under 35 U.S.C. §103(a), as being unpatentable over Zigmond in view of Hite in further view of Cohen in further view of U.S. Patent No. 6,876,974 (“Marsh”). Applicants respectfully traverse the rejection.

Claim 40 depends from claim 1. As explained above, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, do not disclose or suggest at least one element of claim 1. The cited portions of Marsh fail to disclose or suggest the elements of claim 1 that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen. Marsh describes “avoiding starvation, that is, where a commercial reaches its expiration date without having reached its maximum number of exposures, is a condition that should be avoided in order to maximize revenue.” See Office Action, p. 17, citing Marsh, col. 9, lines 51-65. The cited portions of Marsh fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1. Therefore, the cited portions of Zigmond, Hite, Cohen, and Marsh, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claim 40 depends. Hence, claim 40 is also allowable, at least by virtue of its dependence from claim 1.

### **Claims 42-43 are Allowable**

The Office has rejected claims 42-43, under 35 U.S.C. §103(a), as being unpatentable over Zigmond in view of Hite in further view of Cohen in further view of U.S. Patent Publication No. 2003/0149601 (“Cabral”). Applicants respectfully traverse the rejections.

Claims 42 and 43 depend from claim 1. As explained above, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, do not disclose or suggest at least one element of claim 1. The cited portions of Cabral fail to disclose or suggest the elements of claim 1 that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen. Cabral describes restricting “certain types of advertisements, such as advertisements for adults, which may include alcohol or real estate, during certain times.” *See* Office Action, p. 18, citing Cabral, paragraph [0058]. The cited portions of Cabral fail to disclose or suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each of the allowable advertisements of the set of allowable advertisements and comparing at least one weighted characteristic of each of the allowable advertisements, where the at least one weighted characteristic includes at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 1. Therefore, the cited portions of Zigmond, Hite, Cohen, and Cabral, individually or in combination, fail to disclose or suggest at least one element of claim 1, from which claims 42 and 43 depend. Hence, claims 42 and 43 are also allowable, at least by virtue of their dependence from claim 1.

### **Claim 45 is Allowable**

The Office has rejected claim 45, under 35 U.S.C. §103(a), as being unpatentable over Zigmond in view of Hite in further view of Cohen in further view of U.S. Patent Publication No. 2002/0069105 (“Rosario Botelho”) in further view of U.S. Patent No. 6,493,709 (“Aiken”). Applicants respectfully traverse the rejection.

Claim 45 depends from claim 44. As explained above, the cited portions of Zigmond, Hite, and Cohen, individually or in combination, do not disclose or suggest at least one element of claim 44. The cited portions of Rosario Botelho and Aiken fail to disclose or suggest the elements of claim 44 that are not disclosed or suggested by the cited portions of Zigmond, Hite, and Cohen. For example, the cited portions of Rosario Botelho and Aiken fail to disclose or

suggest selecting a particular advertisement from a set of allowable advertisements (stored at a media delivery device) to be inserted into a media delivery stream by applying a weighting to at least one characteristic of each allowable advertisement of the set of allowable advertisements and comparing weighted characteristics of each of the allowable advertisements, where the weighted characteristics include at least a time that a particular targeted advertisement was last played by the media delivery device, as in claim 44. Therefore, the cited portions of Zigmond, Hite, Cohen, Rosario Botelho, and Aiken, individually or in combination, fail to disclose or suggest at least one element of claim 44, from which claim 45 depends. Hence, claim 45 is also allowable, at least by virtue of its dependence from claim 44.

### CONCLUSION

Applicants have pointed out specific features of the claims not disclosed, suggested, or rendered obvious by the cited portions of the cited references as applied in the Final Office Action. Accordingly, Applicants respectfully request reconsideration and withdrawal of each of the rejections, as well as an indication of the allowability of each of the pending claims.

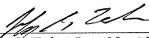
Any changes to the claims in this response that have not been specifically noted to overcome a rejection based upon the cited art should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

3-12-2010  
Date

  
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Jeffrey G. Toler, Reg. No. 38,342  
Attorney for Applicants  
Toler Law Group, Intellectual Properties  
8500 Bluffstone Cove, Suite A201  
Austin, Texas 78759  
(512) 327-5515 (phone)  
(512) 327-5575 (fax)